January 30, 2004

SENATE BILL No. 272

DIGEST OF SB 272 (Updated January 29, 2004 12:31 pm - DI 44)

Citations Affected: IC 6-2.5; IC 6-3; IC 6-3.1; noncode.

Synopsis: Closed or partially inactive military bases. Provides the following tax incentives to a business that locates new operations in certain qualified areas containing a completely or partially inactive or closed military base: (1) A sales tax exemption for sales of utility services or commodities made to the business. (2) An adjusted gross income tax rate of 5% for the year of relocation and the next succeeding four taxable years. Provides a military base investment cost credit against state tax liability for a taxpayer who purchases an ownership interest in or otherwise invests in a business located in a qualified area. Provides that the tax incentives are not available to a business that does not have operations in a qualified area and that substantially reduces or ceases its operations at another location in Indiana in order to relocate them within the qualified area.

Effective: July 1, 2004; January 1, 2005.

Weatherwax, Ford, Hume, Mrvan, Howard, Alting, Broden, Simpson, Wyss, Craycraft, Jackman

January 8, 2004, read first time and referred to Committee on Economic Development and Technology.
January 13, 2004, reported favorably — Do Pass; reassigned to Committee on Finance.
January 29, 2004, amended, reported favorably — Do Pass.

January 30, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

C O P Y

SENATE BILL No. 272

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-2.5-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) As used in this section, a "power subsidiary" means a corporation which is owned or controlled by one (1) or more public utilities that furnish or sell electrical energy, natural or artificial gas, water, steam, or steam heat and which produces power exclusively for the use of those public utilities.

(b) A power subsidiary or a person engaged as a public utility is a retail merchant making a retail transaction when the subsidiary or person furnishes or sells electrical energy, natural or artificial gas, water, steam, or steam heating service to a person for commercial or domestic consumption.

(c) Notwithstanding subsection (b), a power subsidiary or a person engaged as a public utility is not a retail merchant making a retail transaction ~~when:~~ **in any of the following transactions:**

(1) The power subsidiary or person provides, installs, constructs, services, or removes tangible personal property which is used in

connection with the furnishing of the services or commodities listed in subsection (b).

(2) The power subsidiary or person sells the services or commodities listed in subsection (b) to another public utility or power subsidiary described in this section or a person described in section 6 of this chapter. ~~or~~

(3) The power subsidiary or person sells the services or commodities listed in subsection (b) to a person for use in manufacturing, mining, production, refining, oil extraction, mineral extraction, irrigation, agriculture, or horticulture. However, this exclusion for sales of the services and commodities only applies if the services are consumed as an essential and integral part of an integrated process that produces tangible personal property and those sales are separately metered for the excepted uses listed in this subdivision, or if those sales are not separately metered but are predominately used by the purchaser for the excepted uses listed in this subdivision.

(4) The power subsidiary or person sells the services or commodities listed in subsection (b) to a business that locates all or part of its operations in one (1) of the following areas after June 30, 2004, and uses the services or commodities in that area:

(A) A military base (as defined in IC 36-7-30-1(c)).

(B) A military base reuse area established under IC 36-7-30.

(C) An economic development area established under IC 36-7-14.5-12.5.

(D) A military base recovery site designated under IC 6-3.1-11.5.

However, this subdivision does not apply to a business that substantially reduces or ceases its operations at another location in Indiana in order to relocate its operations in an area described in this subdivision, unless the department determines that the business had existing operations in the area described in this subdivision and that the operations relocated to the area are an expansion of the business's operations in the area.

SECTION 2. IC 6-3-2-1, AS AMENDED BY P.L.192-2002(ss), SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 1. (a) Each taxable year, a tax at the rate of three and four-tenths percent (3.4%) of adjusted gross income is imposed upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person.

(b) **Except as provided in section 1.5 of this chapter,** each taxable year, a tax at the rate of eight and five-tenths percent (8.5%) of adjusted gross income is imposed on that part of the adjusted gross income derived from sources within Indiana of every corporation.

SECTION 3. IC 6-3-2-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: **Sec. 1.5. (a) As used in this section, "qualified area" means:**

(1) a military base (as defined in IC 36-7-30-1(c));

(2) a military base reuse area established under IC 36-7-30;

(3) an economic development area established under IC 36-7-14.5-12.5; or

(4) a military base recovery site designated under IC 6-3.1-11.5.

(b) Except as provided in subsection (c), a tax at the rate of five percent (5%) of adjusted gross income is imposed on that part of the adjusted gross income of a corporation that is derived from sources within a qualified area if the corporation locates all or part of its operations in a qualified area during the taxable year, as determined under subsection (e). The tax rate under this section applies to the taxable year in which the corporation locates its operations in the qualified area and to the next succeeding four (4) taxable years.

(c) A taxpayer is not entitled to the tax rate described in subsection (b) to the extent that the taxpayer substantially reduces or ceases its operations at another location in Indiana in order to relocate its operations within the qualified area, unless:

(1) the taxpayer had existing operations in the qualified area; and

(2) the operations relocated to the qualified area are an expansion of the taxpayer's operations in the qualified area.

(d) A determination under subsection (c) that a taxpayer is not entitled to the tax rate provided by this section as a result of a substantial reduction or cessation of operations applies to the taxable year in which the substantial reduction or cessation occurs and in all subsequent years. Determinations under this section shall be made by the department of state revenue.

(e) The department of state revenue:

(1) shall adopt rules under IC 4-22-2 to establish a procedure for determining the part of a corporation's adjusted gross

income that was derived from sources within a qualified area; and

(2) may adopt other rules that the department considers necessary for the implementation of this chapter.

SECTION 4. IC 6-3.1-11.6 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]:

Chapter 11.6. Military Base Investment Cost Credit

Sec. 1. As used in this chapter, "NAICS Manual" refers to the current edition of the North American Industry Classification System Manual - United States published by the National Technical Information Service of the United States Department of Commerce.

Sec. 2. As used in this chapter, "qualified area" means:

(1) a military base (as defined in IC 36-7-30-1(c));

(2) a military base reuse area established under IC 36-7-30;

(3) an economic development area established under IC 36-7-14.5-12.5; or

(4) a military base recovery site designated under IC 6-3.1-11.5.

Sec. 3. As used in this chapter, "pass through entity" means:

(1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) a partnership;

(3) a limited liability company; or

(4) a limited liability partnership.

Sec. 4. As used in this chapter, "qualified investment" means any of the following:

(1) The purchase of an ownership interest in a business that locates all or part of its operations in a qualified area during the taxable year, if the purchase is approved by the department of commerce under section 12 of this chapter.

(2) Subject to section 13 of this chapter, an investment:

(A) that is made in a business that locates all or part of its operations in a qualified area during the taxable year;

(B) through which the taxpayer does not acquire an ownership interest in the business; and

(C) that is approved by the department of commerce under section 12 of this chapter.

Sec. 5. As used in this chapter, "SIC Manual" refers to the current edition of the Standard Industrial Classification Manual of the United States Office of Management and Budget.

Sec. 6. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax), as computed after the application of the credits that, under IC 6-3.1-1-2, are to be applied before the credit provided by this chapter.

Sec. 7. As used in this chapter, "taxpayer" means an individual or pass through entity that has any state tax liability.

Sec. 8. As used in this chapter, "transfer ownership" means to purchase existing investment in a business, including real property, improvements to real property, or equipment.

Sec. 9. (a) A taxpayer is entitled to a credit against the taxpayer's state tax liability for a taxable year if the taxpayer makes a qualified investment in that taxable year.

(b) The amount of the credit to which a taxpayer is entitled is the percentage determined under section 12 of this chapter multiplied by the amount of the qualified investment made by the taxpayer during the taxable year.

Sec. 10. (a) If a pass through entity is entitled to a credit under section 9 of this chapter but does not have state tax liability against which the tax credit may be applied, an individual who is a shareholder, partner, or member of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter. However, a pass through entity and an individual who is a shareholder, partner, or member of the pass through entity may not claim more than one (1) credit for the same investment.

Sec. 11. (a) If the amount determined under section 9(b) of this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to the following taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for a subsequent taxable year.

(b) A taxpayer is not entitled to a carryback or refund of unused credit.

Sec. 12. (a) To be entitled to a credit for a purchase described in section 4(1) of this chapter, a taxpayer must request the department of commerce to determine:

(1) whether a purchase of an ownership interest in a business located in a qualified area is a qualified investment; and

(2) the percentage credit to be allowed.

The request must be made before a purchase is made.

(b) To be entitled to a credit for an investment described in section 4(2) of this chapter, a taxpayer must request the department of commerce to determine:

(1) whether an investment in a business that locates in a qualified area during the taxable year is a qualified investment; and

(2) the percentage credit to be allowed.

The request must be made before an investment is made.

(c) The department of commerce shall find that a purchase or other investment is a qualified investment if:

(1) the business is viable;

(2) the taxpayer has a legitimate purpose for purchase of the ownership interest or the investment;

(3) the purchase or investment would not be made unless a credit is allowed under this chapter; and

(4) the purchase or investment is critical to the commencement, enhancement, or expansion of business operations in the qualified area and:

(A) in the case of a purchase described in section 4(1) of this chapter, the purchase will not merely transfer ownership, and the purchase proceeds will be used only in business operations in the qualified area; and

(B) in the case of an investment described in section 4(2) of this chapter, the investment will not be made in a business that substantially reduces or ceases its operations at another location in Indiana in order to relocate its operations within the qualified area, as described in section 13 of this chapter.

(d) If the department of commerce finds that a purchase or other investment is a qualified investment, the department of commerce shall certify the percentage credit to be allowed under this chapter based upon the following:

(1) For a purchase described in section 4(1) of this chapter, a percentage credit of ten percent (10%) may be allowed based on the need of the business for equity financing, as

demonstrated by the inability of the business to obtain debt financing.

(2) A percentage credit of two percent (2%) may be allowed for purchases of or investments in business operations in the retail, professional, or warehouse/distribution codes of the SIC Manual (or corresponding sectors in the NAICS Manual).

(3) A percentage credit of five percent (5%) may be allowed for purchases of or investments in business operations in the manufacturing codes of the SIC Manual (or corresponding sectors in the NAICS Manual).

(4) A percentage credit of five percent (5%) may be allowed for purchases of or investments in high technology business operations (as defined in IC 4-4-6.1-1.3).

(5) A percentage credit may be allowed for jobs created during the twelve (12) month period following the purchase of an ownership interest in the business or other investment in the business, as determined under the following table:

JOBS CREATED	**PERCENTAGE**
Less than 11 jobs	**1%**
11 to 25 jobs	**2%**
26 to 40 jobs	**3%**
41 to 75 jobs	**4%**
More than 75 jobs	**5%**

(6) A percentage credit of five percent (5%) may be allowed if fifty percent (50%) or more of the jobs created in the twelve (12) month period following the purchase of an ownership interest in the business or other investment in the business will be reserved for residents in the qualified area.

(7) A percentage credit may be allowed for investments made in real or depreciable personal property, as determined under the following table:

AMOUNT OF INVESTMENT	**PERCENTAGE**
Less than $25,001	**1%**
$25,001 to $50,000	**2%**
$50,001 to $100,000	**3%**
$100,001 to $200,000	**4%**
More than $200,000	**5%**

The total percentage credit may not exceed thirty percent (30%).

(e) In the case of a purchase described in section 4(1) of this chapter, if all or a part of a purchaser's intent is to transfer ownership, the tax credit shall be applied only to that part of the purchase that relates directly to the enhancement or expansion of

business operations in the qualified area.

Sec. 13. (a) This subsection applies to an investment described in section 4(2) of this chapter.

(b) A taxpayer is not entitled to claim the credit provided by this chapter to the extent that the taxpayer invests in a business that substantially reduces or ceases its operations at another location in Indiana in order to relocate its operations within the qualified area, unless:

(1) the business had existing operations in the qualified area; and

(2) the operations relocated to the qualified area are an expansion of the business's operations in the qualified area.

(c) A determination under subsection (b) that a taxpayer is not entitled to the credit provided by this chapter as a result of a business's substantial reduction or cessation of operations applies to credits that would otherwise arise in the taxable year:

(1) in which the substantial reduction or cessation occurs; or

(2) in which the taxpayer proposes to make the investment in the business, if different than the taxable year described in subdivision (1).

Determinations under this section shall be made by the department of state revenue.

Sec. 14. To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department of state revenue. The taxpayer shall submit to the department of state revenue the certification of the percentage credit by the department of commerce and all information that the department of state revenue determines is necessary for the calculation of the credit provided by this chapter and for the determination of whether an investment is a qualified investment.

SECTION 5. [EFFECTIVE JANUARY 1, 2005] **IC 6-3-2-1, as amended by this act, and IC 6-3-2-1.5 and IC 6-3.1-11.6, both as added by this act, apply to taxable years beginning after December 31, 2004.**

SECTION 6. [EFFECTIVE JULY 1, 2004] **IC 6-2.5-4-5, as amended by this act, applies to transactions that occur after June 30, 2004.**

SENATE MOTION

Madam President: I move that Senators Hume, Mrvan, Howard, Alting and Broden be added as coauthors of Senate Bill 272.

WEATHERWAX

SENATE MOTION

Madam President: I move that Senator Simpson be added as coauthor of Senate Bill 272.

WEATHERWAX

COMMITTEE REPORT

Madam President: The Senate Committee on Economic Development and Technology, to which was referred Senate Bill No. 272, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS and be reassigned to the Senate Committee on Finance.

(Reference is made to Senate Bill 272 as introduced.)

FORD, Chairperson

Committee Vote: Yeas 7, Nays 0.

SENATE MOTION

Madam President: I move that Senators Wyss, Craycraft and Jackman be added as coauthors of Senate Bill 272.

WEATHERWAX

COMMITTEE REPORT

Madam President: The Senate Committee on Finance, to which was referred Senate Bill No. 272, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, delete lines 5 through 42.

Delete pages 5 through 7.

Page 8, delete lines 1 through 2.

Page 12, line 31, delete "IC 6-3.1-7-2, IC 6-3.1-10-2, and IC 6-3.1-10-8, all".

Page 12, line 32, delete ", IC 6-3.1-10-8.5,".

Page 12, line 32, delete "all" and insert "**both**".

and when so amended that said bill do pass.

(Reference is to SB 272 as printed January 14, 2004.)

BORST, Chairperson

Committee Vote: Yeas 13, Nays 0.